

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID MARSH, a/k/a
JASON K. MITHRANDIR,

Plaintiff,

v.

Case No. 2:91-cv-006
HON. ROBERT HOLMES BELL

ROBERT BROWN, JR., et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on September 16, 2005. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Plaintiff filed a motion for contempt to enforce a 1991 injunction in this case. Defendants moved to terminate the injunction. The injunction is terminated under 28 U.S.C. § 3626, because it is no longer necessary. Plaintiff no longer resides at the prison where the original defendants worked, and the policy at issue in the original case is no longer in effect. Accordingly, plaintiff's motion for contempt is moot and will be denied. Plaintiff has asserted new claims that are not related to his original cause of action.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #92) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that plaintiff's motion for contempt (Docket #82) is DENIED. Defendants' motion to terminate the injunction (Docket #86) is GRANTED.

The court must next decide whether an appeal of this decision would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the stated reasons, the court discerns no good-faith basis for an appeal. Should the plaintiff appeal this decision, the court will assess the \$255 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the \$255 appellate filing fee in one lump sum.

Date: October 6, 2005

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE